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80-1696

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No.

PAUL BYRNE HARING,

Petitioner,

v.

DONALD T. REGAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

NO.

Paul Byrne Haring,

Petitioner,

v.

Donald T. Regan, */

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Paul Byrne Haring, prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on November 7, 1980 (petition for re-hearing denied January 9, 1981), which

affirmed without opinion the judgment of the United States District Court for the District of Columbia entered on April 10, 1979.

*/ This litigation was commenced in the District Court with W.Michael Blumenthal, then Secretary of the Department of Treasury, named as the defendant in his official capacity. Donald T. Regan, recently confirmed Secretary of the Department of Treasury, is substituted as the defendant in his official capacity, in accordance with Rule 40.3 of the rules of this Court.

QUESTIONS PRESENTED

I

Whether Petitioner, Paul Byrne Haring, an employee of the Exempt Organizations Division of the Internal Revenue Service, has standing to seek a declaratory judgment and an injunction to restrain the Respondent, Secretary of the United States Department of Treasury, from classifying as tax exempt, charitable organizations under Section 501(c)(3) of the Internal Revenue Code, or as tax exempt social welfare organizations under Section 501(c)(4) of the Code, the following types of organizations: (1) abortion clinics and other organizations promoting or encouraging abortions; and (2) organizations promoting public acceptance of homosexuality as "normal."

II

Whether the District Court is barred by the Anti-Injunction Act, 26 U.S.C. Section 7421, and the Declaratory Judgment Act, 28 U.S.C. Section 2201, from granting Petitioner an injunction and declaratory judgment prohibiting the Treasury Department from issuing rulings encouraging abortions and homosexual conduct.

III.

Whether it was error for the District Court to dismiss Section 14 of Petitioner's complaint, which alleged that conclusions or implications that unborn children, fetal or embryonic, are not human beings or persons drawn by the United States Supreme Court in Roe v. Wade, 410 U.S. 113, and Doe v. Bolton, 410 U.S. 179, were based on fraud

perpetrated upon the Court, or mistake of fact, since the Respondent Government in this action has not denied the allegation.

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OPINIONS BELOW

The judgment of the Court of Appeals is not reported. It appears as Appendix B. The judgment and opinion of the District Court is reported at 471 F. Supp. 1172 and appears as Appendix G.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on November 7, 1980, and Petitioner's Motion for Rehearing was denied on January 9, 1981. This Petition for a Writ of Certiorari was filed within ninety days of the latter date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the interpretation of Article III of the Constitution of the United States, Sections 501(c)(3) and (4) of the Internal Revenue Code of 1954, the Anti-Injunction Act, 26 U.S.C. Sec. 7421, and the Declaratory Judgment Act, 28 U.S.C. Sec. 2201. The pertinent text of these provisions is set forth in Appendix H.

STATEMENT OF THE CASE

Paul Byrne Haring, the Petitioner, is an attorney employed as a tax law specialist in the Exempt Organizations Technical Branch of the National Office of the Internal Revenue Service. In 1972, Mr. Haring started opposing the Defendant's tax ruling policies which encourage abortion on the grounds that the policies are contrary to the laws of federal tax exemption and cause the mass destruction of innocent human lives. In 1974 or 1975, Mr. Haring opposed Internal Revenue policies which appeared to encourage homosexual conduct and corrupt public morals. His opposition consisted of writing memoranda and discussing these matters with the appropriate Internal Revenue Service officials. Mr. Haring was threatened, in 1974 or

1975, by the Branch Chief of the Exempt Organizations Technical Branch, with "adverse action" (a technical term which could mean written reprimand, temporary separation, demotion in grade, or discharge) if he did not cease opposing such IRS policies. Mr. Haring continues to work under this threat which, as far as he is aware, is still in effect. Mr. Haring filed an affidavit documenting this threat with the District Court.

On January 18, 1978, Mr. Haring filed suit under the Equal Employment Opportunity Act of 1972, Public Law No. 92-261, 86 Stat. 103, et seq., which extended the protection of Title VII of the Civil Rights Act of 1964 to federal employees of executive agencies, and under the Declaratory Judgment Act, 28 U.S.C. Sec. 2201. Mr. Haring alleged

in his Complaint that he was denied a promotion from GS-12-4 to GS-13-2 in 1977 because of his opposition to the IRS tax rulings policies concerning organizations promoting abortion and homosexuality. He sought declaratory and injunctive relief to reverse the IRS rulings policies regarding organizations promoting abortion and homosexuality, retroactive promotion and back pay, an injunction against future discrimination, attorneys fees, costs, expenses, and other appropriate relief.

The District Court denied the Government's motion for summary judgment, in which the Government claimed that it would create an undue hardship on the IRS to accommodate Mr. Haring's religious beliefs (Roman Catholic), but granted the Government's motion to dismiss Mr.Haring's

REASONS FOR GRANTING THE WRIT

The case involves extremely important national issues which, in the public interest, should be decided correctly. The case calls into question the basis of this Court's opinions in Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973) by alleging that such decisions were based on fraud perpetrated upon this Court or on mistake of fact. If the issue was tried in the District Court the facts could be conclusively established that human life does begin at fertilization, and that the abortion policies of this country are destroying far in excess of one million innocent human lives per year. The District Court, in its opinion (pages 32 & 33a of Appendix G), apparently erroneously interpreted this Court's opinions in

request for injunctive and declaratory relief. Mr. Haring and the Government entered into a settlement agreement, which was approved by the District Court on October 26, 1979, to settle all other issues of the case without prejudice to the claims for declaratory and injunctive relief. The settlement is part of Appendix C.

On November 7, 1980, the Court of Appeals affirmed the judgment of the District Court, and on January 9, 1981, denied Mr. Haring's Motion for Rehearing. The decision of the Court of Appeals is attached as Appendix B and the Court's denial of rehearing is attached as Appendix A.

Roe v. Wade and Doe v. Bolton as sanctioning tax exemption for abortion clinics, because this Court had an exhaustive treatment on the subject of abortion but failed to mention the criminal laws, 18 U.S.C. 552; 18 U.S.C. 1461, 1462; 19 U.S.C. 1305; District of Columbia Code Section 22-201; Canal Zone Code, Title 6, Chapter 3, Vol. 76A, Sec. 171.

Whether or not providing abortions is a charitable purpose within the meaning of Section 501(c)(3) of the Internal Revenue Code is a very important Federal issue. Also, because of the widespread and extensive societal harm done by classifying organizations promoting the acceptance of homosexuality as normal, the IRS rulings classifying such organizations as charitable or

educational within the meaning of Sec. 501(c)(3) of the Internal Revenue Code are of great national importance.

The Court of Appeals, by affirming the judgment of the District Court, sanctioned an application of the doctrine of standing which so departs from the generally accepted test that a federal employee of the executive branch would have no effective recourse from an unlawful directive by his superiors. Under the test applied by the District Court and affirmed by the Court of Appeals in this case, a federal employee has three options: (1) make his views known and thereafter be treated as a second-class employee, threatened and ostracized; (2) acquiesce in what is believed to be unlawful and immoral governmental action; (3) resign and lose seniority and

benefits he ought not to have to lose. Unlawful policies of federal employers should not receive such blanket, practical immunity.

MR. HARING, AS AN EMPLOYEE DIRECTLY INVOLVED IN ADMINISTERING THE FEDERAL LAW OF TAX-EXEMPT ORGANIZATIONS, HAS STANDING TO SEEK A DECLARATORY JUDGMENT AND AN INJUNCTION TO RESTRAIN THE IRS FROM CLASSIFYING ORGANIZATIONS PROMOTING AND ENCOURAGING ABORTION AND HOMOSEXUAL CONDUCT AS TAX EXEMPT INSTITUTIONS.

Mr. Haring insisted, in administrative proceedings preceding the filing of his complaint, in his complaint, and by affidavit, that he was discriminated against by the IRS because of his opposition to the IRS rulings policies concerning organizations promoting or

encouraging abortions and homosexual conduct. An IRS promotion panel once filed a written evaluation that Plaintiff "lacks objectivity in some areas." Members of the promotion panels have admitted that the "areas" were abortion and homosexuality.

In his Pre-Trial Conference Statement Mr. Haring stated that his opposition to IRS abortion and homosexual rulings policies have cost him thousands of dollars in lost wages. Mr. Haring, in the affidavit he filed in the District Court, swore that the "heart and underlying cause" of his controversy with the IRS was the "IRS's rulings policy on abortion clinics and homosexual organizations" and that three IRS tax law specialists would testify that an injunction sought by Mr. Haring would be of

personal benefit to Mr. Haring in increasing his chances of being promoted by removing the cause of the controversy. For purposes of considering the Government's motion for dismissal, the Court was obligated to accept Plaintiff's affidavit as true. Whether the injury to Mr. Haring was inflicted directly or indirectly is irrelevant when the injury would not have occurred without the IRS's policies. The fact that Mr. Haring would not implement IRS's policies was not the reason Mr. Haring alleged he was discriminated against but rather a defense promoted by the IRS. In fact the IRS, as far back as 1972, advised Mr. Haring that the IRS did not want him to handle abortion cases. Furthermore, the Government did not ask Mr. Haring to grant tax exemptions to abortion clinics and

organizations promoting homosexuality until after he informally complained that he was discriminated against by the promotion panel in June 1977.

Mr. Haring did refuse to handle cases involving organizations that promote abortion and homosexuality, but this was not the basis for the contention that he had standing; therefore, recognizing Mr. Haring's standing as an employee would not, as the District Court feared, automatically grant standing to government employees who refused to implement particular governmental policies.

Mr. Haring does not have to show that his interest in reversing the exemption policies is arguably within the zone of interests protected by the First Amendment. Standing is not based on the First Amendment.

Also with respect to the First Amendment, it would in no way violate the First Amendment should the Service reverse its abortion and homosexual rulings policies or for the District Court to issue an injunction to require the IRS to stop such rulings. Mr. Haring is religiously and legally opposed to the IRS policies, but he is not asking the District Court to enjoin the IRS on such grounds. He seeks the injunction on the grounds that Congress did not exempt such organizations from taxation.

To hold that persons who are motivated by religious or spiritual values may not obtain an injunction to restrain a governmental agency from exceeding its authority because they are religiously motivated is religious discrimination in itself. The Courts are open to all

persons regardless of their religious belief or lack of religious belief.

Operating an abortion clinic is not a religious activity and promoting homosexuality is normally a secular activity, but even if they involve religion, there is no constitutional right to tax exemption. Congress has denied tax exemption to organizations that engage in laudable activity, for example, partitipating in political campaigns, or engaging in substantial legislative activity. Tax exemption is a matter of legislative discretion. Thus, for a Court to find that Congress has not granted tax exemption to organizations organized and operated to promote abortion and homosexuality would not violate anyone's First Amendment rights.

Former Internal Revenue Service Commissioner Randolph W. Thrower, in his testimony before the Senate Subcommittee on Employment, Manpower and Poverty on November 16, 1970, concerning recognition of tax exemption for public interest law firms, summarized the law of charity as follows: "The term 'charity' has appeared in the Internal Revenue Code since 1913 with little explicit Congressional definition. However, it is generally accepted that Congress intended to use 'charitable' in its generally accepted legal sense. This view is reflected in our Regulations, published rulings, and decision law. In the general body of charity law the characterization of objects as charitable has been largely by judicial decision . . . Not every purpose deemed to be of benefit to the community

in a way which the law regards as charitable. Furthermore, it must be significant rather than incidental benefit, and it must be 'exclusively' charitable. Although seldom an issue, the principle and the fact that its application has been uniquely a judicial rather than a legislative tradition is found in both English and American jurisprudence. That is, 'charity' in the legal sense is composed of a body of law reflecting Anglo-American judicial decisions dating at least from the Statutes of Charitable Uses enacted in 1601."

There is no legal precedence for holding that providing abortion or promoting abortion and homosexuality is a charitable purpose. In addition, the Internal Revenue Code has to be construed and applied in consonance with the entire

United States Code. In Green v. Connally, 330 F.Supp. 1150 (1971) the Court held, "The Code must be construed and applied in consonance with the public policy against support for racial segregation of schools, public and private . . . The Internal Revenue Code provisions on charitable exemptions and deductions must be construed to avoid frustration of a Federal policy." If the Internal Revenue Code is construed in consonance with the Federal statutes against abortion, it is impossible to reach the conclusion that abortion clinics are "charitable."

On March 3, 1873, approximately 8 years after Congress proposed the Fourteenth Amendment to the Constitution, Congress passed a sweeping statute to suppress abortion. See Chapter CCLVIII

Volume XVII, United States Statutes at Large, Page 598, which is Appendix I of this Petition. The Act applied to the District of Columbia, Territories of the United States, and other areas where the United States had exclusive jurisdiction, to make it a criminal offense to possess, lend, sell or give any drug or medicine for causing unlawful abortion, or advertise where any such abortion might be obtained. In addition, the Act amended laws pertaining to the postal department to make it a felony to mail any article or thing intended for the procuring of abortion, or any notice or advertisement where abortions could be obtained. Furthermore, the Act prohibited the importation into the United States of any articles or things for abortion. The Act made it a criminal offense for any

employee of the Government of the United States to knowingly aid or abet any persons engaged in violation of this Act, and authorized any judge of the District and Circuit Courts of the United States to issue warrants to any marshal or deputy marshal to search, seize or take possession of any such articles "to the end that the same may be condemned and destroyed by proceedings." These same Statutes have been basically continued from March 3, 1873, to the present day, and can be found in 18 United States Code 1461 and 1462, see Appendix H 75-80a 18 U. S. Code 552, see Appendix 80a; 19 U. S. Code 1305, see Appendix 82a; District of Columbia Code 22-201, see Appendix 85a; Canal Zone Code, see Appendix H 86a.

Even the statute which first provided for income tax exemptions, H.R.

3321, enacted by the 63rd Congress on October 3, 1913, contained a specific prohibition against importation of any article for causing unlawful abortions (G. Subsection 1), and made it a criminal offense for government officers, employees or agents to aid or abet any persons importing, advertising, dealing in, exhibiting, or sending or receiving by mail, any publications or representtions for procuring abortion. Punishment was to be imprisonment at hard labor for not more than ten years or a fine of not more than $5,000, or both. (G. Subsection 2).

In attempts during the 1970's to revise and codify the U. S. Criminal Code the United States Senate adopted an amendment to retain these anti-abortion prohibitions.

In a case contemporaneous with the adoption of the income tax exemptions the 7th Circuit Court of Appeals in Bours v. United States, 229 F. 960 (1915) interpreted the Federal policy against abortion as follows: "In applying the national statute to an alleged offensive use of the mails at a named place, it is immaterial what the local statutory definition of abortion is, what acts of abortion are included, or what excluded. So the word 'abortion' in the national statute must be taken in its general medical sense. Its inclusion in the statute governing the use of the mails indicates a national policy of the discontenancing abortion as inimical to the national life. . ." It is difficult to see how it could be any clearer that Congress did not intend to exempt

abortion clinics from income taxation.

With respect to organizations promoting homosexuality, it is clear that homosexual acts are criminal offenses in a number of jurisdictions, and that under the law of charities any organization which encourages the violation of these laws is not exempt from Federal income taxation.

The inherent and great damage to society by tax policy which would encourage homosexual acts was recognized by the Internal Revenue Service from approximately 1969 to 1977, during which period the Internal Revenue Service denied exemptions to organizations which unqualifiedly promoted homosexuality.

Mr. Haring would also show the Court that his controversy with the IRS is capable of judicial resolution. Courts have traditionally determined what are charitable purposes. In fact, Courts have more authority than the IRS to determine what is charity. The IRS' role is simply to administer the law as enacted by Congress and interpreted by the Courts. The suit is a real adversarial conflict rather than a request for a hypothetical opinion. There is a great body of legal principle concerning the law of charity which can be applied by the Court to the facts presented to it. Most cases involving important public issues since the founding of our country have been examined by the Courts to determine whether the Government exceeded its authority. Certainly the issues

presented in this case are important public issues, and the Courts should not construct standing requirements so stringent that literally no one can challenge such policies.

The case of Eastern Kentucky Welfare Rights Organization v. Simon, 426 U.S. 26 (1976) is distinguishable from the present case in that the Welfare Rights Organization was seeking relief against the IRS rather than the hospital which had discriminated against their members. In the present case there is no third party. Mr. Haring has alleged that it is the IRS's policies, not the policies of a third party, which have injured him.

If Mr. Haring is not permitted to challenge the agency action in question, then effectively no one could. The

result would be that IRS policies, totally contrary to congressional intention, would be left completely unchecked.

The IRS officials making the policies will not contest them, nor will the abortion and homosexual groups receiving the favorable rulings. Mr. Haring, on the other hand, as a threatened employee directly involved in the implementation of service policy, and as an individual with views diametrically and unalterably opposed to these IRS policies, is the person most likely to sharpen the issues in an adversarial proceeding.

Justice Blackmun's dissent in Sierra Club asks the illuminating question: "Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional concepts

do not quite fit and do not prove to be entirely adequate for new issues?" 405 U.S. at 755-56 (Blackmun, J. dissenting).

THE ANTI-INJUNCTION ACT, 26 U.S.C. SECTION 7421, AND THE DECLARATORY JUDGMENT ACT, 28 U.S.C. SECTION 2201, DO NOT BAR THE RELIEF SOUGHT.

Section 7421 (a) of the Anti-Injunction Act provides that "no suit for the purposes of restraining the assessment or collection of any tax shall be maintained in any court by any person...". 26 U.S.C. Section 7421. (Emphasis added.) This Court has interpreted this provision so as to be inapplicable to the case at bar:

> The object of Sec. 7421 (a) is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the

collection of federal taxes. Enoch v. Williams Packing and Navigation Co., 370 U.S. 1 (1961). (Emphasis added.)

If Mr. Haring is successful in obtaining an injunction against IRS' granting of tax-exempt status to organizations promoting abortion and homosexuality, the injunction will result in more, not less, tax revenue being collected by the Government. Since an injunction would require the Internal Revenue Service to collect possibly millions of dollars from abortion clinics, the Government's unique but unsupportable contention that Section 7421 (a) bars suits for injunctions which facilitate the collection of tax[1/] flies in the face of the statute's purpose and existing precedent:

> (T)he manifest purpose of Sec. 7421 (a) is to permit the United States to

> assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for a refund. In this manner, the United States is assured of prompt collection of its revenue.
> 370 U.S. at 7.

The lower court addressed and rejected defendant's construction of the Anti-Injunction statute in McGlotten v. Connally, 338 F.Supp. 448 (D.D.C. 1972) (Three Judge District Court). In that case plaintiff, a black American, was allegedly denied membership in the Benevolent and Protective Order of Elks (Elks) solely on the basis of his race. Plaintiff brought a class action based on Title VI of the Civil Rights Act to enjoin the Secretary of Treasury from

granting tax exemption to organizations which exclude non-whites from membership. 338 F.Supp. at 450. The McGlotten case, which is remarkably similar to the case at bar, was before the lower court in a motion to dismiss.

The District Court had no difficulty in rejecting Defendant's argument that the suit was barred by the Anti-Injunction Declaratory Judgment Acts. The Court's analysis is clearly and directly applicable to the case at bar:

> Plaintiff's action has nothing to do with the collection or assessment of taxes. He does not contest the amount of his own tax, nor does he seek to limit the amount of tax revenue collectible by the United States. The preferred course of raising his objections in a suit for refund is not

> available. In this situation we cannot read the statute to bar the present suit. To hold otherwise would require the kind of ritualistic construction which the Supreme Court has repeatedly rejected. .... In the present case, the central purpose is clearly inapplicable. It follows that neither Sec. 7421 (a) nor the exception to the Declaratory Judgment Act prohibits this suit. 338 F.Supp. at 453-54.

Nothing, in the sum total of the precedent defendant offers in support of its argument that the Anti-Injunction and Declaratory Judgment Acts bar the instant suit, contradicts the well-reasoned decision of the lower court in McGlotten.

In Bob Jones University v. Simon, 416 U.S. 725 (1974), Plaintiff, a private

University, sued for injunctive relief to prevent revocation of its tax-exempt status by the Internal Revenue Service. This Court correctly held that the suit was one "for the purpose of restraining the assessment or collection of any tax" and therefore was barred by the Anti-Injunction statute. 416 U.S. at 738-42. Naturally, as the lower Court noted in McGlotten, the case at bar does not present an impediment to the collection of taxes--should Plaintiff prevail the Government will actually collect more revenue not less. In Alexander v. "Americans United", Inc., 416 U.S. 752 (1974), Plaintiff sought injunction preventing revocation of its tax-exempt status. Suit was barred by Sec. 7421(a) because it was a suit to enjoin the assessment or collection of taxes. In

Enoch v. Williams, 370 U.S. 1 (1962), suit, if successful, would have caused loss of revenue, and was therefore barred by Section 7421 (a). In short, Bob Jones does not control the instant case.[2/]

Moreover, Mr. Haring is not in a position to "pay his tax and seek a refund" through judicial channels. Therefore, he should be allowed to establish at a trial on the merits that an injunction is necessary to prevent the alleged unlawful conduct from continuing.

THE DISTRICT COURT ERRED IN DISMISSING MR. HARING'S CLAIM ALLEGING THAT ROE V. WADE, 410 U.S. 113, AND DOE V. BOLTON, 410 U.S. 179, WERE BASED ON FRAUD PERPETRATED UPON THE COURT OR MISTAKE OF FACT.

In support of the allegation of fraud or mistake of fact, Mr. Haring was

prepared to present to the District Court a number of competent witnesses, obstetrician, gynecologist, psychiatrist, pathologist and biologist, who would have shown the Court factually that abortion destroys human lives, actual human beings, rather than potential human beings, and that the "evidence" presented in Roe v. Wade and Doe v. Bolton was fraudulent.

The allegation of mass murder is extremely serious and capable of being proved. Because of the seriousness of the charge, which was undenied by the Government, the District Court erred in summarily dismissing the allegation. Even if Mr. Haring has no standing, the Court has a duty of its own to determine whether decisions are based on fraudulent evidence, especially where a serious

accusation is made by a responsible person of mass killing of innocent human beings as a result of such mistaken judicial decisions.

"Human life is precious because it is the gift of a God whose love is infinite, and when God gives life, it is forever. . . no one ever has the authority to destroy unborn life. . . A distinguished American, Thomas Jefferson, once stated: 'The core of human life and happiness and not their destruction is the just and only legitimate object of good government.'" Pope John Paul II Homily at the Mass on the Washington Mall, October 7, 1979.

Many persons believe that God is and will punish America and the world for the sins of abortion and homosexual conduct. For example, with respect to abortion,

Mother Teresa of Calcutta, recent recipient of the Nobel Peace Prize, has stated, "Only God can decide life and death. The healthy person may be closer to dying or even more dead than the person who is dying. The healthy person might be spiritually dead, only it doesn't show. Who are we to decide? That is why abortion is such a terrible sin. You are not only killing life, but putting self before God; yet people decide who has to live and who has to die. They want to make themselves Almighty God. They want to take the power of God in their hands. They want to say, 'I can do without God. I can decide.' That is the most devilish thing that a human hand can do. That is why we are paying with such terrible things happening in the world. It is a punishment; it is the cry of those

children continually coming before God." To Give the Love of Christ, James McGovern, Emmaus Books, page 58.

In addition to the fraud perpetrated upon the Court with respect to the humanity of the unborn child, the Court in Roe v. Wade was also misled as to the rationale for anti-abortion laws. The Court was led to believe that anti-abortion laws were merely to protect the health of the mother, and that the Fourteenth Amendment provided a right to abortion, whereas the facts clearly indicate that this is absolutely false. One illustration of this is the passage in 1873 of Senate Bill No. 1572, which became Chapter CCLVIII of the laws enacted by the Third Session of the 42nd Congress. (The law is Appendix I of this brief.) The law which broadly restricted

pornography, contraceptives and abortion was taken up and passed without opposition in the Senate. Senator William A. Buckingham of Norwich, Connecticut, on February 20, 1873, made the following motion: "I move now to take up the bill (S. 1572) for the suppression of trade in and circulation of obscene literature and articles of immoral use." (Congressional Globe and Appendix, Third Session, 42nd Congress, Part 2, P.1524) Senator Hannibal Hamlin of Bangor, Maine, speaking on the bill, said "Let the Senate take the bill as has been reported and pass it. The country demands it." (P. 1525, Congressional Globe and Appendix, Third Session, 42nd Congress, Part 2) Senator Roscoe Conkling of Utica, New York, spoke of the "...indignation and disgust which everybody feels in

reference to the acts which are here aimed at." The sponsor of the law was Senator William Windom, an attorney originally from Belmont County, Ohio, who moved to Winona, Minnesota. Senator Windom, a Republican, was a member of the Congress at the time the Fourteenth Amendment was proposed and ratified, having been a member of the House of Representatives from March 4, 1859 to March 3, 1969. (After his service in the U. S. Senate Mr. Windom was appointed Secretary of the Treasury in the cabinets of Presidents Garfield and Harrison.) The House of Representatives suspended the rules and passed the measure, 100-37, on March 1, 1873, rather than approve of a motion to refer the measure to the Committee on the Judiciary. (Volume 111, Congressional Globe, P. 2006) The motion,

at least allegedly, was made to refer the the bill to the Committee on the Judiciary because of its importance and need of additional consideration. No one in the House or Senate spoke against the merits of the bill.

CONCLUSION

For the foregoing reasons, Petitioner seeks a Writ of Certiorari directed to the Court of Appeals on the grounds that Petitioner has standing to seek a declaratory judgment and an injunction to prohibit the Internal Revenue Service from issuing tax exempt rulings in excess of its authority to organizations promoting abortion and homosexuality, that the District Court is not barred by the Anti-Injunction Act or the Declaratory Judgment Act from issuing such declaratory judgment and injunction, and that

such part of the opinion of the District Court which dismissed portions of Petitioner's complaint seeking a declaratory judgment and injunctive relief should be reversed and the case be remanded for trial on the merits of the case.

Respectfully submitted,

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1/ As will be demonstrated, even the cases cited by Defendant do not support this anomalous construction.

2/ This Court in Bob Jones indicated that the McGlotten Court's interpretation of another portion of Sec. 7421(a), dealing with federal tax liens, was inconsistent with its view of the statute. 416 U.S. a. ? n.6. However, the District Court's interpretation was clearly superfluous dictum and unnecessary to its holding in McGlotten. This Court has not overruled the McGlotten holding in Bob Jones or in its other decisions respecting Sec. 7421 (a).

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1883 September Term, 1980

Paul Byrne Haring, Appellant

Civil Action No. 78-0085

v.

G. William Miller, Secretary of the Treasury

BEFORE: Wright; Chief Judge, McGowan and MacKinnon; Circuit Judges

O R D E R

On consideration of appellant's petition for rehearing, filed December 22, 1980, it is

ORDERED by the Court that the aforesaid petition is denied.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER, Clerk

BY: /s/ Robert A. Bonner

Robert A. Bonner

Chief Deputy Clerk

Jan. 9, 1981

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1883 September Term, 1980

PAUL BYRNE HARING, Civil Action

Appellant No. 78-0085

v.

G. WILLIAM MILLER,

Secretary of the Treasury

Appeal from the United States District Court for the District of Columbia.

Before: WRIGHT, Chief Judge, and McGOWAN and MacKINNON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. While the issues presented occasion no

need for an opinion, they have been accorded full consideration by the court. See Local Rule 13(c).

This court, like the District Court, is of the view that appellant is without standing to bring this action. See Eastern Kentucky Welfare Rights Organization v. Simon, 426 U.S. 26 (1976).

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

For the Court

/s/ George A. Fisher

George A. Fisher

Nov. 7, 1980 Clerk

APPENDIX C

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

PAUL BYRNE HARING,	)	
	)	
Plaintiff,	)	
	)	Civil Action
v.	)	
	)	No. 78-0085
W. MICHAEL BLUMENTHAL	)	
	)	
Defendant.	)	
	)	

STIPULATION OF SETTLEMENT AND DISMISSAL

This action arose under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 2000e et seq. The parties now having determined that the interest of justice would be best served by the settlement of the employment discrimination issues in this action, it is agreed that this litigation be settled upon the following terms:

1. Plaintiff's employment discrimination claim shall be, and hereby is,

dismissed with prejudice pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure. This dismissal does not include nor shall it prejudice plaintiff's claim for injunctive relief contained in sections 11 through 15 of plaintiff's complaint and contained in paragraph 1 of plaintiff's prayer for relief and all other parts of plaintiff's complaint which are relevant to plaintiff's claim for injunctive and declaratory judgment relief, which was previously dismissed by this Court and is now the subject of an appeal to the U.S. Court of Appeals for the District of Columbia Circuit (notice of appeal dated July 2, 1979).

2. Defendant shall pay to plaintiff $9,000.00 in attorneys fees and costs. Such sum shall represent full settlement

and satisfaction of any and all claims the plaintiff has now or hereafter may acquire against the defendants on account of and arising out of the allegations of discrimination encompassed in this action.

3. Defendant shall restore plaintiff forty (40) hours of annual leave which was taken for the purpose of presenting this action.

4. Plaintiff shall have the right to convert to permanent career part-time employment, consisting of 16 hours per week, to begin on a date of his choosing, but no later than February 15, 1980.

5. This settlement is entered into solely for the purpose of disposing of the instant litigation without further proceedings. Defendant does not admit liability, and specifically, defendant

does not admit that he, or any of his officers, agents, or employees unlawfully discriminated against plaintiff as alleged in the complaint.

/s/ Paul Byrne Haring
PAUL B. HARING
P. O. Box 6182
Washington, D.C. 20004

Plaintiff, Pro Se

/s/ Carl S. Rauh
CARL S. RAUH
United States Attorney

/s/ Royce C. Lamberth
ROYCE C. LAMBERTH
Assistant United States Attorney

/s/ Scott T. Kragie
SCOTT T. KRAGIE
Assistant United States Attorney

Enter this 26th day of October, 1979

/s/ Harold H. Greene
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

PAUL B. HARING, Plaintiff, v. W. MICHAEL BLUMENTHAL, Secretary of the Treasury Defendant.	Civil Action No. 78-0085

O R D E R

Upon consideration of defendant's motion for continuance and plaintiff's opposition thereto, and the entire record herein, it is this 27th day of July, 1979,

ORDERED that defendant's motion for continuance be, and hereby is, granted, and it is further

ORDERED that the dates for trial and for the submission of trial briefs in

this matter shall be rescheduled at a later date, and it is further

ORDERED that expert witnesses on the issues of abortion, homosexuality, witchcraft and other practices to which plaintiff harbors moral objections shall not be allowed to testify as the Court has previously dismissed plaintiff's injunctive request pertaining to such practices.

/s/ Harold H. Greene

UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Paul B. Haring,	:	
	:	
Plaintiff,	:	
	:	Civil Action
v.	:	
	:	No. 78-0085
W. Michael Blumenthal,	:	
	:	
Defendant.	:	

ORDER

Upon consideration of plaintiff's motion to vacate, alter or amend the Judgment entered by this Court on April 10, 1979, it appearing good cause has not been shown, it is by the Court this 8th day of May, 1979,

ORDERED That plaintiff's motion is hereby denied.

/s/ Harold H. Greene

Harold H. Greene

United States District Judge

May 8, 1979

APPENDIX F

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

PAUL B. HARING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	
W. MICHAEL BLUMENTHAL,	)	No. 78-0085
	)	
Defendant.	)	
	)	
	)	

O R D E R

Upon consideration of plaintiff's motion to vacate, alter or amend judgment, and defendant's opposition thereto, and upon further consideration of this Court's Order of April 10, 1979, as amended[1/] by the Court's Order filed April 18, 1979, it is by the Court this 1st day of May, 1979

ORDERED that plaintiff's motion to vacate, alter or amend judgment is hereby denied.

/s/ Harold H. Greene

UNITED STATES DISTRICT JUDGE

1/ The amendments were typographical corrections which have been incorporated into the opinion in Appendix G .

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Paul Byrne Haring,	:	
	:	
Plaintiff,	:	
	:	Civil Action
v.	:	
	:	No. 78-0085
W. Michael Blumenthal,	:	
	:	
Defendant.	:	

Filed April 10, 1979.

Reported in 471 F. Supp. 1172 (1979)

OPINION

HAROLD H. GREENE, District Judge.

In this action plaintiff requests relief from alleged religious discrimination in violation of Title VII of the Civil Rights Act of 1964, and an injunction[1] to restrain defendant from classifying "abortion clinics and other organizations promoting abortion and homosexuality as tax exempt organizations."

Plaintiff is an employee of the Internal Revenue Service, occupying the position of Tax Law Specialist, GS-12, in the Technical Branch of the Exempt Organizations Division.[2/] He applied for promotion to Tax Law Specialist (Reviewer), GS-13, in that division, but was turned down, allegedly on account of his Catholic religious belief and conduct.[3/] The government contends that there also were other reasons for plaintiff's failure to achieve promotion, but for purposes of the present motion it concedes that plaintiff was not promoted solely because of his inability or unwillingness to abide by Internal Revenue Service policies on abortion.[4/] After receiving the agency's final decision on December 19, 1977, plaintiff filed the instant action which, as

indicated, challenges the tax-exempt status of various organizations and alleges violations of his rights under Title VII.[5] Defendant has moved for a dismissal of the tax exempt status claim, and for summary judgment on the employment discrimination claim.

I

Under section 501(a) of the Internal Revenue Code, 26 U.S.C. Sec. 501(a), organizations more specifically designated in sections 501(c)(3) and (c)(4) as being organized for religious, charitable,[6] educational, or social welfare purposes, are exempt from income taxation. Within the framework of these statutory provisions, the Internal Revenue Service has granted tax-exempt status to abortion clinics and to various organizations involved

with homosexual rights, and additional Revenue Rulings dealing with abortion clinics may be issued at future dates. One portion of plaintiff's suit challenges these present and expected rulings, and defendant has moved to dismiss that part of the complaint on several grounds, principally plaintiff's alleged lack of standing to bring the action.

The requirement in the law that only a person with "standing" may pursue a lawsuit in the courts stems from the requirement in Article III of the Constitution that the federal courts may hear and decide only actual "cases" and "controversies." Flast v. Cohen, 392 U.S. 83, 95, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). While the issue of standing has been much mooted and has witnessed

several shifts in perspective, it is now clear that the "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions?" See Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). If a plaintiff is unable to make such an allegation, he lacks standing; the case then is deemed not to involve an actual controversy but to call merely for an advisory opinion;[7/] and the court lacks jurisdiction. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 37 note 15, 96 S.Ct. 1917, 48

L.Ed.2d 450 (1976); Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). The government asserts that this is precisely the situation here.

Plaintiff in this case concedes, as he must, that he does not have standing to challenge the exemption rulings at issue here merely because he is a citizen or taxpayer (Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 228, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974); United States v. Richardson, 418 U.S. 166, 94 S.Ct., 2940, 41 L.Ed.2d 678 (1974); Tax Analysts and Advocates v. Simon, 390 F.Supp. 927 (D.D.C.1975), affirmed, 184 U.S.App.D.C. 238, 566 F. 2d 130 (1977)[8/] and claims instead to find a basis for his ability to bring this lawsuit in his employment status.

In order to achieve standing in his capacity as an employee of the Internal Revenue Service, plaintiff must be able to allege that the challenged actions of that Service are causing him an "injury in fact" and that his interests are arguably within "the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970); Barlow v. Collins, 397 U.S. 159, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970). In the view of this Court, he cannot satisfy either test.

Plaintiff claims that he is suffering an injury in fact in that, but for the existence of IRS tax policies which exempt abortion clinics from

taxation, he would not be subject to the alleged discrimination with respect to promotions which stems from his objection to these exemptions. However, there clearly is an insufficient nexus between the exemption rulings plaintiff complains about and the alleged harm to his beliefs and practices to satisfy the injury in fact standard.[9/] It is the action of the promotion panel, not the exemption rulings of IRS, which is the direct cause of the injury to plaintiff; he is able to challenge that action in a Title VII suit; he has in fact done so; and under the law his action pursuant to that statute constitutes his exclusive remedy for discrimination in employment. Brown v. General Services Administration, 425 U.S. 820, 96 S.Ct. 1961, 48 L.Ed.2d 402(1976).[10/]

Plaintiff's allegation of injury in fact is thus on its face insufficient, for there would still be no cognizable injury even if the allegation were proved. Indeed, if the requisite nexus were found to exist here, every employee of every governmental organization would automatically be deemed to have standing to challenge any action of government, or at least any action of the department or agency which employs him, for he could acquire such standing by the simple device of refusing to implement the particular governmental policy and await the inevitable adverse personnel action. Were the Court to entertain such a doctrine, the consequence would be that only government employees, but not other citizens or taxpayers, would be able to

challenge in court governmental action with which they disagree--hardly an appropriate basis either in law or in public policy upon which to rest or extend the jurisdiction of the federal courts.

Plaintiff has also failed to show that his interest in reversing the exemption policies is arguably within the zone of interests protected by the First Amendment.

The abortion clinics themselves obviously are not vested with the requisite governmental authority for a valid constitutional deprivation claim, nor do they in any way impede or interfere with plaintiff's freedom of speech or religion. Insofar as the grant of tax exemptions for such clinics are concerned, while they of course

constitute governmental action, it is action which does not violate the Constitution.

Tax exemptions for religious organizations in general have long been held not to constitute an impermissible government sponsorship of religion. Walz v. Tax Commission, 397 U.S. 664, 675, 90 S.Ct.1409, 25 L.Ed.2d 697 (1970); Marker v. Shultz, 158 U.S.App.D.C. 224, 485 F.2d 1003 (1973). More specifically, the grant of an exemption from taxation which is otherwise appropriate, e.g. to providers of health care, does not impermissibly infringe upon the Establishment Clause of the First Amendment merely because abortions are or are not performed by the particular health care organizations. See Ward v. St. Anthony's Hospital, 476 F.2d 671

(10th Cir. 1973); Chrisman v. Sisters of St. Joseph of Peace, 506 F.2d 308, 314 (9th Cir. 1974) (Catholic hospitals which refuse to allow abortions to be performed on their premises are not ineligible for tax exemption). Such exemptions do not foster an excessive governmental entanglement with religion, inhibit the free exercise of religion, or fail to reflect a secular purpose. See Tilton v. Richardson, 403 U.S. 672, 678, 91 S.Ct.2091, 29 L.Ed.2d 790 (1971); Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). Different religions take different views on abortion (Roe v. Wade, 410 U.S. 113, 160-61, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) and the Constitution neither requires nor prohibits governmental funding of abortions. Maher v. Roe,

432 U.S. 464, 480, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977). For these reasons, plaintiff's claimed interest cannot be regarded as being within the zone of interests protected by the First Amendment.

To the contrary, it is plaintiff's claim which, if granted, would be violative of the First Amendment. Should the Internal Revenue Service or the Court grant him the relief he seeks, they would do precisely that which the Supreme Court in Tilton, supra, stated government may not do--they would entangle government with the tenets of plaintiff's particular religious faith and inhibit the free exercise of religion by those with views opposed to plaintiff's.[11/] See also Epperson v. Arkansas, 393 U.S.97, 89 S.Ct.266, 21 L.Ed.2d 228 (1968).[12/]

Finally, even if plaintiff had standing to sue, his claim would be subject to dismissal because the Anti-Injunction Act, 26 U.S.C. Sec. 7421(a), bars any injunctive action brought for the purpose of restraining the assessment or collection of any tax "by any person." Whatever may have been the gloss placed upon that statute by McGlotten v. Connally, 338 F.Supp. 448 (D.D.C.1972) (three-judge court), it is now clear that the law means what its words plainly imply--that it prevents the institution of injunction actions to challenge tax exemption rulings in favor of other taxpayers. Bob Jones University v. Simon, 416 U.S. 725, 731 note 6, 94 S.Ct. 2038, 40 L.Ed.2d 496 (1974); Commissioner v. "Americans United," Inc., 416 U.S. 752, 760-2, 94 S.Ct.

2053, 40 L.Ed.2d 518 (1974); Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed.2d 292 (1961); Bittker and Kaufman, Taxes and Civil Rights: "Constitutionalizing" the Internal Revenue Code, 82 Yale L.J. 51, 58 (1972.[13/]

For these reasons, defendant's motion to dismiss the claim which challenges the validity of tax exemptions to abortion clinics and other organizations will be granted.

II

Plaintiff's second claim is that he was denied a promotion to the position of a reviewer position in IRS's Exempt Organizations Branch in violation of the Constitution of the United States and of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec.

2000e-2(a)(1). In support of this claim, plaintiff argues, first, that the grant of tax exemptions to groups favoring abortions[14/] is illegal and that for this reason he should not be denied promotion for failing to implement the policy which establishes such grants, and second, that to deny him a promotion solely because of his unwillingness to process tax exemption applications for purposes which he regards as repugnant to his religious principles violates his rights under Title VII. The first of these contentions has little merit; the second presents a far more substantial question.

III

In order to prevail on his "illegality" argument, plaintiff must demonstrate, first, that the legality

of the decisions of the Internal Revenue Service to grant tax exemption to abortion clinics and to organizations advocating free choice with respect to abortions may be determined by an employee of IRS, that is, by his refusal to implement them; and second, if the answer to the first question is in the affirmative, that the IRS decisions in fact violate the Constitution or laws of the United States. He has failed in both respects.

As has been noted, plaintiff lacks standing to contest the validity of IRS rulings. Unless and until the Congress, or a court of competent jurisdiction in an action by an individual with the requisite standing to sue, determines that a particular tax exemption ruling is invalid, the employees of the

Service, as long as they wish to remain in that status, are obliged to implement that ruling. Not merely the concept of a uniform tax policy but the effectiveness of the government of the United States as a functioning entity would be in jeopardy if each employee could take it upon himself to decide which particular laws, regulations, and policies are legal or illegal, and to base his official actions upon that private determination.[15/]

The President must "take Care that the Laws be faithfully executed" (U.S. Const., Art. II, sec. 3), and he is not permitted to refrain from executing laws duly enacted by Congress. See National Treasury Employees Union v. Nixon, 160 U.S. App.D.C. 321, 492 F.2d 587 (1974); United States v. Alessio, 528 F.2d 1079

(9th Cir. 1976); Guadamnz v. Ash, 368 F.Supp. 1233 (D.D.C.1973). See also Goldwasser v. Brown, 135 U.S.App.D.C. 222, 230, 417 F.2d 1169, 1177 (1969), cert. denied, 397 U.S. 922, 90 S.Ct. 918, 25 L.Ed.2d 103 (1970). Surely an individual employee in the Executive Branch has no greater power in that regard.

Even if plaintiff could, somehow, raise the illegality point, it would not help his case. He has cited various fragments of congressional enactments, old as well as relatively more recent,[16/] in support of his contention that abortion is illegal and so is the exemption from taxation of groups advocating abortion. However, it is clear that these various fragments of legislation are unsupportive of

plaintiff's broad thesis. Not one has any bearing on the issue of the legality of tax exemptions for abortion clinics, and all of them, moreover, predate the 1973 Supreme Court decisions which dealt exhaustively with the abortion question in its historical, constitutional, and statutory context.

In Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) and Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), the Supreme Court considered in great detail and at length the history and the legality of abortion laws in the United States, at common law in England, and elsewhere, and concluded both that the right to privacy includes the right to an abortion and that state laws which punish the performance of abortions may

be unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment. Not only is there no suggestion in these opinions that the Court deemed that Congress had spoken to prohibit abortions,[17/] but they affirmatively hold that, depending on the circumstances, there is a constitutional right to abortion. Thus, there is no basis for plaintiff's claim that the Internal Revenue Service violates federal law when it grants tax exemptions to abortion clinics.

The authority of the Commissioner of Internal Revenue to issue revenue and tax exemption rulings is based on 26 U.S.C. Sec. 7805. He has exercised that authority in accordance with law. 26 C.F.R. 1-501(c)(3)-1(d)(2)(2). No court has struck down his rulings, and

the Congress--which has ultimate authority over tax policy--has not overruled the Commissioner by appropriate legislation. In short, plaintiff has totally failed to support his illegality argument.

IV

Section 703(a)(1) of the Civil Rights Act, 42 U.S.C.Sec.2000e-2(a)(1), 42 U.S.C. Sec.2000e(j)(1970 ed.,Supp.V), provides that it "shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." In its 1972 amendments to the Act, Congress added the following definition

> The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.[18/]

It is that provision which is principally at issue here.

On this motion for partial summary judgment,[19/] plaintiff claims that the Internal Revenue Service is able without undue hardship to accommodate its operation to his practices, while the government argues that, for a variety of reasons it cannot do so.

First. The Internal Revenue

Service contends that plaintiff's refusal to handle applications for exemptions from persons or groups which advocate abortion or other practices to which he objects creates problems with the efficient and expeditious operations of the office in which he works.

As indicated, plaintiff seeks promotion to the position of reviewer in the Exempt Organizations Division. Such reviewers have considerable independent and quasi-judicial authority, for when a reviewer agrees with a tax law specialist recommendation to grant tax exempt status to an organization, he is authorized to issue a final favorable ruling.[20/] Additionally, reviewers have administrative authority for they supervise a number of other persons. Currently, two reviewers are

assigned to each group of 8-12 tax law specialists, and sometimes a reviewer must also substitute as an acting supervisor, leaving only one active reviewer available for the group. The Service contends that because of these staffing patterns plaintiff's refusal to process applications he considers objectionable would make it difficult to operate the Exempt Organizations Division were he to be promoted to one of the reviewer positions.[21/]

Plaintiff's affidavit--which for present purposes must be assumed to be true--asserts that in his experience the types of cases with which he might have a moral or religious problem constitute only a minute percentage of the total volume of applications for exemption processed by a reviewer in the Exempt

Organizations Division. He estimates that percentage to constitute "a fraction of 1% of the total cases or at most less than 2%."[22/] Assuming this volume of cases to be accurate, it appears that the Internal Revenue Service should have no difficulty, on a purely mechanical level, to accommodate itself to the overt manifestations of plaintiff's beliefs. The applications for exemption which plaintiff refuses to handle could clearly be processed without undue hardship or burden to the Service, or any significant expense or loss of time, by another reviewer.[23/] On this basis, therefore, defendant cannot meet the "undue hardship" test of section 703(a)(1).

Second. Defendant's next set of arguments may be grouped together for

432 U.S. 464, 480, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977). For these reasons, plaintiff's claimed interest cannot be regarded as being within the zone of interests protected by the First Amendment.

To the contrary, it is plaintiff's claim which, if granted, would be violative of the First Amendment. Should the Internal Revenue Service or the Court grant him the relief he seeks, they would do precisely that which the Supreme Court in Tilton, supra, stated government may not do--they would entangle government with the tenets of plaintiff's particular religious faith and inhibit the free exercise of religion by those with views opposed to plaintiff's.[11/] See also Epperson v. Arkansas, 393 U.S.97, 89 S.Ct.266, 21 L.Ed.2d 228 (1968).[12/]

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It is that provision which is principally at issue here.

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Organizations Division. He estimates that percentage to constitute "a fraction of 1% of the total cases or at most less than 2%."[22/] Assuming this volume of cases to be accurate, it appears that the Internal Revenue Service should have no difficulty, on a purely mechanical level, to accommodate itself to the overt manifestations of plaintiff's beliefs. The applications for exemption which plaintiff refuses to handle could clearly be processed without undue hardship or burden to the Service, or any significant expense or loss of time, by another reviewer.[23/] On this basis, therefore, defendant cannot meet the "undue hardship" test of section 703(a)(1).

Second. Defendant's next set of arguments may be grouped together for

purpose of analysis, for all of them relate in one way or another to the Internal Revenue Service's fears that a precedent here would eventually come to complicate its operations to an unreasonable degree.

Thus, it is claimed that, if this plaintiff were permitted to become a reviewer notwithstanding his refusal to handle certain types of cases, others will be encouraged to do likewise, and a point will soon be reached where the agency will be faced with very real and substantial practical problems. Alternatively, it is contended that plaintiff's own views appear to be subject to change and amplification; that he began by refusing to deal with abortion and homosexuality, an area which he now expanded to encompass "any

organization which violates or promotes and encourages violations of the Ten Commandments of God and violations of God's Natural Law" (see note 4 supra); and that it is impossible to predict how plaintiff's views will further change in the future and what proportion of a reviewer's workload might have to be diverted to accommodate those views. Finally, defendant suggests that, if plaintiff must be promoted to a reviewer position notwithstanding his announced policies, a precedent will be set for his promotion, or that of others like him, to higher and yet higher supervisory levels, where both from the point of view of administrative efficiency and of policy it will become less and less possible to avoid undue hardship to the Service. In short,

defendant suggests, a line must be drawn at some time, and it might as well be here and now.

That line of reasoning, in all of its various aspects, misconceives the appropriate standard under the Civil Rights Act. The intent and effect of the 1972 amendments to the Act, as the Supreme Court pointed out in Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 74, 97 S.Ct. 2264, 2271, 53 L.Ed.2d 113 (1977) was to "make it an unlawful employment practice under Sec. 703(a)(1) for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees." While that principle is clear, unfortunately the applicable case law provides no

significant guidance on the question of whether the "undue hardship" standard may be met by an employer's assumption that, should he accommodate one employee in one situation, it may well be that undue difficulties will arise if others were to assert the same or similar rights.

The TWA case itself is not illuminating on that issue, for it turned on the circumstance that an accommodation of an employee who refused to work on Saturdays would have amounted to a breach of the company's collective-bargaining agreement with a labor union (432 U.S. at 79, 97 S.Ct. 2264; see also, Huston v. Local No. 93, 559 F.2d 477 (8th Cir. 1977); Ward v. Allegheny Ludlum Steel Corp., 560 F.2d 579 (3rd Cir. 1977) and on the fact that to

accommodate the employee would have entailed a specific financial burden on the employer. Neither of these factors is present here.

Other decisions by lower courts have sometimes held for[24/] and sometimes against the complaining employee,[25/] depending upon particular facts and circumstances, but generally they have failed to explore what appears to be the critical issue: whether the level of hardship must be measured by the accommodation of the one employee seeking relief or by the precedent-setting effect of the grant of such relief to him and the conceivable actions of others.

In the absence of authoritative guidance, it seems to this Court that "undue hardship" must mean present undue

hardship, as distinguished from anticipated or multiplied hardship. Were the law otherwise, any accommodation, however slight, would rise to the level of an undue hardship because, if sufficiently magnified through predictions of the future behavior of the employee's co-workers, even the most minute accommodation could be calculated to reach that level.[26/]

Under the Act, employers must make "reasonable accommodation" to the religious beliefs of their employees--a relative term which depends upon the facts and circumstances. Redmond v. GAF Corp., 574 F.2d 897 (7th Cir. 1978). Unless the statutory mandate is to be rendered meaningless, it must be held to provide that until facts or circumstances arise from which it may be concluded

that there can no longer be an accommodation without undue hardship, the employee's religious practices are required to be tolerated. This Court is not prepared to adopt a construction which would emasculate this law designed to protect religious liberty and the free exercise of religious practices and, to the extent that any of the decisions cited in note 25 supra may be construed as calling for such an interpretation, I decline to follow them.

There is, moreover, no reason to believe either that this plaintiff's zone of objectionable policies will grow significantly or that his stand will have a mushroom effect on other IRS reviewers. Irrespective of how plaintiff's objections to IRS policies are phrased, it appears, on this record

at least, that they will still constitute only a small segment of his workload. Most IRS exemption decisions, it may safely be assumed, are in the more pedestrian realms of the financial world, and even when they involve other public policy issues, they are not likely very often to touch upon plaintiff's category of objectionable policies, however much those policies may have been inflated most recently to give them their broadest and most diffuse expression. Further--unlike, for example, the typical Saturday workday problem which has been before the courts in so many different guises --there is little real incentive for others to emulate this plaintiff. It is not probable that many employees will carry convictions of a sufficiently

stubborn nature as would cause them to take the fairly extreme route this plaintiff has chosen. Unlike prohibitions on laboring during certain days of the week, the refusal to make decisions with respect to specific issues does not appear to be a widespread and deeply ingrained religious tenet.[27/]

In any event, however, if, contrary to the assumptions made by the Court, it subsequently develops either that plaintiff enlarges the zone of his objections to such an extent that it encompasses a significant part of his assigned workload, or that other IRS employees follow his example and refuse to handle a significant number of applications for tax exemptions on grounds of offensiveness to religious

belief, then at some point the level of "undue hardship" provided for in the statute will have been reached, and defendant will then be free to take all appropriate and necessary action. Should such an eventuality develop, the employee or employees involved would not be protected by section 703(a)(1) of the Act from failures or refusals to hire, discharge, or take other action to protect the efficient conduct of the employer's business.[28/]

Third. The government raises a fundamental question of principle. It argues that what is at stake here is the integrity of the Internal Revenue Service and, indeed, of the Nation's uniform tax system itself. Citizens are entitled to have confidence in that Service and that system, and this

confidence, so it is claimed, would be jeopardized if plaintiff's insistence on his interpretation of law and public policy were allowed to prevail. The Service also argues in this connection that different standards must be applied to judicial or quasi-judicial officers[29/] than to employees who carry out mere ministerial functions, and that any deviation by such an officer from duly promulgated law and policy must be regarded as per se inflicting an undue hardship on the government which employs him.

Those arguments would be extremely persuasive, even conclusive, if plaintiff were taking the position that he would deny tax exemptions to organizations to whose policies he objects. Indeed it may be that, at one time in the course

of the administrative proceedings, he took that very position. But that is not the posture of this case now. Plaintiff does not assert that he will tailor his decisions to his beliefs but merely that, when there is a conflict between his beliefs and what the law would require him to decide, he will in effect disqualify himself and request that the matter be reassigned to another reviewer.

It is difficult to see how that stand could impair taxpayer confidence in the tax system or the impartiality of the IRS. On the contrary. Decision-makers at all levels not infrequently face conflicts of interest--financial, family-related, or concerning matters of conscience or fixed opinion. Officials are justly criticized when they make

decisions notwithstanding interest or bias,[30] particularly when there is no disclosure. Law and public policy encourage disclosure and disqualification, and public confidence in our institutions is strengthened when a decision-maker disqualifies himself on account of financial interest, insuperable bias,[31] or the appearance of partiality. In a very significant sense, therefore, public policy favors the course of disclosure of bias and disqualification that this plaintiff has chosen, and that course may not be regarded as impairing the integrity of the IRS decision-making function.

The government also suggests that it should not have to accommodate itself to the kind of internal dissent from its policies exemplified by plaintiff's

refusal to process applications for tax exemption from abortion clinics. The short answer is that provided in the Civil Rights Act itself which directs that, absent undue hardship to its operations, the Internal Revenue Service, like any other covered employer, must accommodate itself to dissent based on religious belief.

To be sure, some of plaintiff's beliefs may be regarded by many as bizarre (e.g., his concern with witchcraft or worship of the devil, which at least at the present time can hardly be said to constitute a clear and present danger) and some of his language may be strong (e.g., that the Treasury Department "is encouraging mass killing of innocent human beings in many parts of the world," and that the Supreme

Court abortion rulings are "based on fraud perpetrated on the Court"), but this does not constitute a valid basis for depriving him or his views of the protection of the First Amendment. The Constitution is designed to shield robust and seemingly eccentric expression and conduct no less than those which are more mildly conventional (see Murdock v. Pennsylvania, 319 U.S. 105, 116, 63 S.Ct. 870, 87 S.Ct. 1292 (1943); Redmond v. GAF Corp., supra) and the Civil Rights Act's religious discrimination provisions incorporate that constitutional standard.

In these respects both the First Amendment and the Act merely mirror the fundamental values of this society, based as it is on pluralism in religion

as in many other aspects of life. Mr. Justice Jackson expressed that truth for the Court in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 641-2, 63 S.Ct. 1178, 1187, 87 L.Ed.1628 (1943), in famous words which, while uttered in a slightly different context,[32/] are fully applicable here:

> . . . We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are . . . harmless to others or to the State . . . the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of

freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

The government's final argument--that to accept plaintiff's position would be to involve the Internal Revenue Service in religious affairs in violation of the First Amendment's

prohibition against the establishment of religion--is simply wrong. IRS would be engaged in an establishment of religion if it were to allow plaintiff to make decisions on behalf of the government based on his religious beliefs. No such violation of the Establishment Clause occurs, however, when plaintiff is allowed merely to abstain from making decisions on issues which offend his conscience. To do that is to allow him to exercise his religious preference under the Free Exercise Clause without at the same time entangling the government in religious affairs in violation of the Establishment Clause. It thus serves well both aspects of the religious clauses of the First Amendment.

For the reasons stated, the Court

concludes that there are no grounds of public policy upon which plaintiff could be denied promotional or other employment rights and opportunities. Nevertheless, a word of caution on this aspect of the case may not be inappropriate. The "undue hardship" provision applies not only to the purely mechanical facets of an agency's operations; it is also an integral part of the public policy issues discussed in this part of the Opinion. As indicated, in the view of this Court it is not only permissible but desirable for a decision-maker to disclose his insuperable biases and prejudices and to disqualify himself when they might tend to interfere with the impartial discharge of his duties. Yet if a potential decision-maker has so many conflicts of interests, biases,

prejudices, or convictions (whether religious or otherwise) that he would be unable to perform a substantial proportion of the duties of a particular position, then the appropriate authorities may refuse to appoint or promote him to that position. Thus, there is nothing in the Civil Rights Act, the Constitution, or any other law to require the appointment to a position in the Internal Revenue Service of one who in principle objects to income taxation (just as the law does not require the giving of military command to an avowed pacifist or the appointment of an opponent of criminal penalties to a judgeship on a court with significant criminal jurisdiction.) It is only where, as here, the area of conscientious or other problems leading

to potential disqualifications is relatively slight that such problems do not stand as a bar to employment or advancement.[33/]

IV

The government's motion to dismiss the claim which challenges the exemption status of certain organizations will be granted, and its motion for summary judgment with respect to the Title VII claim will be denied, and the case will be scheduled for trial on the remaining issues.

1/ Plaintiff also seeks relief under the Declaratory Judgment Act, 28 U.S.C. Sec. 2201.

2/ The Exempt Organizations Division is responsible for reviewing applications submitted by organizations seeking tax exempt status, and for approving the applications if they are in compliance with section 501 of the Internal Revenue

Code, 26 U.S.C. Sec. 501.

3/ Plaintiff does not claim discrimination because he is a Catholic, but because he "sought to lead the life of a Roman Catholic." In fact, it appears that three of the four persons granted the reviewer position in the recent promotion action are Roman Catholics.

4/ The principal focus here is on the Internal Revenue Service's policies concerning organizations which advocate or conduct abortions, but plaintiff has stated that his position would be the same with respect to any organization "which violates or promotes and encourages violations of the Ten Commandments of God and violations of God's Natural Law," including, in addition to the promotion of abortion, those promoting homosexuality, worship of the devil, euthanasia, atheism, legalization of marijuana, immoral sexual experiments, sterilization or vasectomies, artificial contraception, and witchcraft. For the sake of simplicity, these matters will generally be referred to hereinafter under the abortion label.

5/ Plaintiff seeks a retroactive promotion and back pay.

6/ The promotion of health and hospital care is considered to be a charitable purpose within the meaning of the Internal Revenue Code. Revenue Ruling

69-545, 1969-2 C.B. 117.

7/ See United States v. Fruehauf, 365 U.S. 146, 81 S.Ct. 547, 5 L.Ed.2d 476 (1961). Mr. Justice Frankfurter has suggested that the requirement of standing to sue was recognized as long ago as the period prior to the adoption of the Constitution, and that it was applied both in the colonial courts and those of Westminster. Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 150, 71 S.Ct.624, 95 L.Ed.817 (1951) (Frankfurter, J., concurring.)

8/ The Court noted in Flast v. Cohen, supra, that a taxpayer as such is a proper party plaintiff only if he challenges the unconstitutionality of an exercise of congressional power under the taxing and spending clause of Art. I, Sec. 8 of the Constitution, and even then he must also establish a nexus between his status and the precise nature of the constitutional infringement alleged. 392 U.S. at 102, 88 S.Ct. 1942.

9/ See Simon v. Eastern Kentucky Welfare Rights Organization, supra; Linda R.S. v. Richard D., 410 U.S. 614, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973); American Society of Travel Agents, Inc. v. Blumenthal, 184 U.S.App.D.C. 253, 566 F.2d 145 (1977).

10/ Moreover, to require the IRS to accommodate its policies to the religious views of one employee would be an obvious, intolerable, and therefore undue

hardship to the legitimate interests of the government. Trans World Airlines v. Hardison, 432 U.S.63, 97 S.Ct.2264, 53 L.Ed.2d 113 (1977). See discussion in Part IV infra.

11/ Needless to say, plaintiff's rights and his views are entitled to no more weight under the Constitution and laws of the United States than competing speech or belief.

12/ The same reasons that inhibit plaintiff's standing to bring the action also compel the conclusion that he has failed to establish any entitlement to substantive relief with respect to the tax exemption claim. Rule 12(b)(6), F.R.Civ.P. As noted, supra, not only is there no nexus between his failure to achieve promotion and the tax exemption rulings issued by the IRS, but the relief plaintiff seeks would require the government to conform its tax exemption policies to the tenets of the Catholic Church, as plaintiff interprets those tenets, and it would thus run afoul of the First Amendment's prohibition on the establishment of religion. While, as McGlotten v. Connally, infra, indicates, it is unconstitutional for the government to provide any benefit, however, indirect, to organizations engaged in racial discrimination, the test is a different one in matters of religion, "where benevolent neutrality on the part of the federal government is the standard . . .." Marker v. Connally, 337 F.Supp. 1301, 1304 (D.D.C.

1972), aff'd, Marker v. Shultz, supra.

13/ Since the injunctive relief plaintiff seeks is barred by the Anti-Injunction Act, declaratory relief is likewise unavailable. See 28 U.S.C. Sec. 2201; Bob Jones University v. Simon, supra, 416 U.S. at 732 note 7, 94 S.Ct. 2038; Junior Chamber of Commerce of Rochester v. United States Jaycees, 495 F.2d 883, 889 (10th Cir. 1975).

14/ On this issue, plaintiff does not appear to challenge exemptions other than in the abortion area. Compare note 4 supra.

15/ Plaintiff's comparison of his situation with that of the Nuremberg defendants is grossly simplistic. The Nuremberg defendants could have escaped liability by failing to seek and retain positions which exposed them to the execution of objectionable activity; and, should plaintiff feel sufficiently strongly about the matter, he may do likewise. Beyond that, plaintiff's analogy demonstrates primarily that debates and dialogues on public issues have become so debased in recent years that such terms as genocide, war crime, crimes against humanity, and the like are bandied about with considerable abandon in connection with almost every conceivable controversial issue of public policy. There is not the slightest similarity between the crimes committed under the aegis of a violent

dictatorship and the implementation of laws adopted under a system of government which offers free elections, freedom of expression, and an independent judiciary as safeguards against excesses and as a guarantee of the ultimate rule of a sovereign citizenry.

16/ E.g., 18 U.S.C. Sections 1461, 1462; and criminal statutes making it a crime to commit abortions in the District of Columbia and in the Canal Zone. Plaintiff also refers to the difficulty the Congress has had in agreeing on a formula for funding abortions for indigents, but it is not clear what relevance that debate has to the issues in this case.

17/ The precise issue of tax exemptions was not before the Court; but in view of its exhaustive treatment of the subject of abortions, its failure to mention the federal legislative enactments relied on by plaintiff speaks loudly to the proposition that no inference of illegality should be drawn.

18/ Prior to the enactment of this provision, the Equal Employment Opportunity Commission had issued guidelines substantially to the same effect. 29 C.F.R. 1605.1 (1968).

19/ As noted supra, the government has asserted that there are reasons other than plaintiff's unwillingness to process certain exemption applications for its failure to promote him. However,

these reasons are not before the Court on the instant motion.

20/ When there is disagreement between them, the dispute is reviewed between them and may ultimately be resolved elsewhere.

21/ IRS has accommodated plaintiff in his capacity as a tax law specialist by not assigning such applications to him.

22/ See plaintiff's affidavit, p. 1. This general estimate was not contradicted in the deposition of Milton Cerny, Assistant Chief of the Branch.

23/ If one of the two reviewers assigned to a particular group of tax law specialists should be absent for a few days for one reason or another, and plaintiff, as a reviewer, were to be excused from processing objectionable applications, IRS operations would still not be significantly impaired, for even in the normal course of events there is a delay of several weeks or months between the submission of applications for tax exemption and the IRS decision thereon.

24/ Draper v. United States Pipe & Foundry Co., 527 F.2d 515 (6th Cir.976); Reid v. Memphis Publishing Co., 468 F.2d 346 (6th Cir. 1972); Riley v. Bendix Corp., 464 F.2d 1113 (5th Cir. 1972); McDaniel v. Essex International, Inc., 571 F.2d 338 (6th Cir. 1978); Redmond v. GAF Corp. 574 F.2d 897

(7th Cir. 1978).

25/ Dewey v. Reynolds Metals Co., 429 F.2d 324 (6th Cir. 1970), aff'd. by an equally divided Court, 402 U.S. 689, 91 S.Ct. 2186, 29 L.Ed.2d 267 (1971); United States v. City of Albuquerque, 545 F.2d 110 (10th Cir. 1976); Williams v. Southern Union Gas Co., 529 F.2d 483 (10th Cir. 1976); Jordan v. North Carolina Nat. Bank, 565 F.2d 72 (4th Cir. 1977); Chrysler Corp. v. Mann, 561 F.2d 1282 (8th Cir. 1977).

26/ See Judge Winter's dissenting opinion in Jordan v. North Carolina National Bank, supra, 565 F.2d at 76.

27/ Employees are also unlikely to enjoy any practical benefits in terms of workload from being relieved of the obligation to make these particular decisions, since presumably an equal number of other cases would be assigned to them to make up for any deficiency.

28/ Similarly, it may well be that, should this plaintiff or some other employee with similar views aspire to an even higher-level supervisory position, undue hardship to the employer's business interests may become more readily apparent (perhaps because of the unavailability or shortage of alternates) notwithstanding a relatively small volume of cases involved. That decision, too, cannot be antiicpated on this record.

29/ It may be assumed that a reviewer with final decision-making authority with respect to many tax exemption applications is in that category.

30/ Every individual obviously is the product of his education and experience, and he brings to his decisions the baggage of that background, sometimes without even being aware of its existence. Decision-makers must struggle not to permit such factors to be a burden on their impartiality, and where they recognize its existence and inevitable influence, voluntary disclosure or disqualification are the appropriate remedies.

31/ See, e.g., Association of National Advertisers, Inc. v. Federal Trade Commission, 460 F.Supp.996 (D.D.C. 1978).

32/ The Barnette case involved a flag salute requirement imposed by a public school system which was objected to by Jehovah's Witnesses. See also, Abington School District v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963) (requirement of prayer recital in public schools unconstitutional).

APPENDIX H

UNITED STATES CONSTITUTION

Article III Section 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party . . .

INTERNAL REVENUE CODE OF 1954

Section 501

(a) An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(c)(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or

distributing of statements), any political campaign on behalf of any candidate for public office.

(c)(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

26 UNITED STATES CODE SECTION 7421

(a) Tax.--Except as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), 7426 (a) and (b)(1), and 7429 (b), no suit for the purpose of restraining the assessment or collection of any

tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

28 UNITED STATES CODE SECTION 2201

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42 UNITED STATES CODE

Section 2000e-2

(a) It shall be unlawful employment

practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or

otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

42 UNITED STATES CODE

Section 2000(e)-5(g)

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the

employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.

18 UNITED STATES CODE

Section 1461

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and--

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for

any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

. Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine or thing--

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the

circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder or assassination.

As amended Jan. 8, 1971, Pub.L. 91-662, Sections 3, 5(b), 6(3), 84 Stat. 1973, 1974.

18 UNITED STATES CODE

Section 1462

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses

any express company or other common carrier, for carriage in interstate or foreign commerce--

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly

or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful--

Shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter. As amended Jan. 8, 1971, Pub.L. 91-662, Sec. 4, 84 Stat. 1973.

18 UNITED STATES CODE

Section 552

Whoever, being an officer, agent, or

employee of the United States knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined not more than $5,000 or imprisoned not more than ten years, or

both.

19 UNITED STATES CODE

Section 1305

All persons are prohibited from importing into the United States from any foreign country any...drug or medicine or any article whatever for causing unlawful abortion...No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and unless it appears to the satisfaction of the appropriate customs official that the obscene or other prohibited articles contained in the package were included therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such

articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: ....

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken in the United States Customs Court from the decision of such customs officer. Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation and destruction of the book or matter seized. Upon the

adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

As amended June 2, 1970, Public Law 91-271, Title III, Section 301 (a), 84 Stat. 287; January 8, 1971, Public Law 91-662, Sec. 1, 84 Stat. 1973.

DISTRICT OF COLUMBIA CODE

Section 1305

Whoever, by means of any instrument, medicine, drug or other means whatever, procures or produces, or attempts to procure or produce an abortion or miscarriage on any woman, unless the same were done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner or medicine, shall be imprisoned in the penitentiary not less than one year or not more than ten years; or if the death of the mother results therefrom, the person procuring or producing, or attempting to procure or produce the abortion or miscarriage shall be guilty of second degree murder.

March 3, 1901, Chapter 854, Sec. 809, 31 Statute 1322;

June 29, 1953, Chapter 1598 Sec. 203, 67 Statute 93.

UNITED STATES STATUTES AT LARGE

Canal Zone Code

Title 6 Chapter 3 Volume 76A

Sec. 171 Acts with intent to produce miscarriage.

Whoever, with intent thereby to procure the miscarriage of a woman, unless the miscarriage is necessary to preserve the life of the woman:

(1) provides, supplies or administers to the woman, or procures her to take, any medicine, drug, or substance; or

(2) uses or employs an instrument or other means shall be imprisoned in the penitentiary not more than five years.

Sec. 173 Advertisements relating to abortion or contraception.

Whoever:

(1) willfully writes, composes or publishes a notice or advertisement of a medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception; or

(2) offers his services by a notice, advertisement or otherwise to assist in the accomplishment of any such purpose

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

Sec. 174 Corroboration of testimony of Woman.

Upon a trial for procuring or attempting to procure an abortion or aiding or assisting therein, the defendant may not be convicted upon the testimony of the woman upon or with whom the offense was committed, unless her testimony is

corroborated by other evidence.

Public Law 87-845, 87th Congress, H.R. 10931, Approved October 18, 1962.

APPENDIX I

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CHAPTER CCLVIII

Enacted March 3, 1873

An Act for the Suppression of Trade in, and Circulation of, obscene Literature and Articles of immoral Use.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever, within the District of Columbia or any of the Territories of the United States, or other place within the exclusive jurisdiction of the United States, shall sell, or lend, or give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession, for any such purpose or purposes, any obscene book, pamphlet, paper,

writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertize the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles in this section hereinbefore mentioned, can be purchased or obtained, or shall manufacture, draw, or print, or in any wise make any of such articles, shall be deemed guilty of a misdemeanor, and, on conviction thereof in any court of the

United States having criminal jurisdiction in the District of Columbia, or in any Territory or place within the exclusive jurisdiction of the United States, where such misdemeanor shall have been committed; and on conviction thereof, he shall be imprisoned at hard labor in the penitentiary for not less than six months nor more than five years for each offense, or fined not less than one hundred dollars nor more than two thousand dollars, with costs of court.

Sec. 2. That section one hundred and forty-eight of the act to revise, consolidate, and amend the statutes relating to the Post-office Department, approved June eighth, eighteen hundred and seventy-two, be amended to read as follows:

"Sec. 148. That no obscene, lewd, or

lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character, or any article or thing designed or intended for the prevention of conception or procuring of abortion, nor any article or thing intended or adapted for any indecent or immoral use or nature, nor any written or printed card, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly, where, or how, or of whom, or by what means either of the things before mentioned may be obtained or made, nor any letter upon the envelope of which, or postal-card upon which indecent or scurrilous epithets may be written or printed, shall be carried in the mail, and any person who shall knowingly deposit, or cause to be deposited, for mailing or

delivery, any of the hereinbefore-mentioned articles or things, or any notice, or paper containing any advertisement relating to the aforesaid articles or things, and any person who, in pursuance of any plan or scheme for disposing of any of the hereinbefore-mentioned articles or things, shall take, or cause to be taken, from the mail any such letter or package, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall, for every offense, be fined not less than one hundred dollars nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than ten years, or both, in the discretion of the judge."

Sec. 3. That all persons are prohibited from importing into the United States, from any foreign country, any of

the hereinbefore-mentioned articles or things, except the drugs hereinbefore-mentioned when imported in bulk, and not put up for any of the purposes before mentioned; and all such prohibited articles in the course of importation shall be detained by the officer of customs, and proceedings taken against the same under section five of this act.

Sec. 4. That whoever, being an officer, agent, or employee of the government of the United States, shall knowingly aid or abet any person engaged in any violation of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall, for every offense, be punished as provided in section two of this act.

Sec. 5. That any judge of any district or circuit court of the United States,

within the proper district, before whom complaint in writing of any violation of this act shall be made, to the satisfaction of such judge, and founded on knowledge or belief, and, if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a warrant directed to the marshal, or any deputy marshal, in the proper district, directing him to search for, seize, and take possession of any such article or thing hereinbefore-mentioned, and to make due and immediate return thereof, to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in case of municipal seizure, and with the same right of appeal or writ of error:

Provided, That nothing in this section shall be construed as repealing the one hundred and forty-eighth section of the act of which this act is amendatory, or to affect any indictments heretofore found for offenses against the same, but the said indictments may be prosecuted to judgment as if this section had not been enacted.

APPROVED, March 3, 1873.

STATE OF VIRGINIA)
)
COUNTY OF FAIRFAX)

AFFIDAVIT OF SERVICE

I hereby certify that service of the foregoing Petition for a Writ of Certiorari has been made upon the Respondent by delivering three (3) copies to the Solicitor General, Department of Justice, Washington, D.C., 20530, and three (3) additional copies to Donald T. Regan, Secretary, Department of Treasury, Washington, D.C 20220, by depositing such copies in the United

States mail, first-class postage pre-paid, this 9thday of April, 1981.

Paul Byrne Haring

Paul Byrne Haring,
Appellant
P. O. Box 6182
Washington, D.C. 20044
(202) 566-4508

Subscribed and sworn to before me this 9th day of April, 1981.

Joyce A. Wheeler

Notary Public

My Commission expires: January 17, 1983